Court No. 1 (E-Court)

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 119 of 2021

Wednesday, this the 1st day of September, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Ex. Sub. Maj. JC No. 214793-H Mahendra Singh, son of Shri Ram Dev Singh, Residence of Village Deputyganj, Nagram Road, Near Shaheed Path, Post Hariharpur, District Lucknow (U.P.) – 226002.

…. **Applicant**

Ld. Counsel for the: **Shri Manoj Kumar Awasthi**, Advocate. Applicant

Versus

1. Union of India, through its Secretary, Ministry of Defence, South Block, New Delhi.

2. The Chief of the Army Staff, IHQ of MoD (Army), Army HQ, South Block, New Delhi-110010.

3. Sena Shiksha Corps Abhilekh Karyalaya, Army Education Corps Record, PIN-908777, C/o 56 APO.

4. The PCDA (Pension), Draupadi Ghat, Allahabad.

... **Respondents**

Ld. Counsel for the: Respondents. **Ms. Prerna Singh**, Advocate Central Govt Counsel.

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicant has sought following reliefs:-

> *(a) To issue, pass an order or direction to Quash/set aside the Impugned order dated 01.11.2000 which is passed by respondent no. 3 annexed as Annexure no. 1.*
> *(b) To direct the respondent to grant of Disability Element of Disability Pension @11-14% with effect from 01.06.2000 i.e. from the date of discharge.*
> *(c) To issue, pass an order or direction to the respondents to grant benefit of rounding off Disability Pension from @50% for two years the applicant and pay due arrears including consequential benefits with interest @12% p.a. till final payment is made.*
> *(d) Any other relief which the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case be also granted along with cost of the OA.*

2. Briefly stated, applicant was enrolled in the Indian Army on 04.05.1968 and was discharged on 01.06.2000 (Forenoon) in Low Medical Category on fulfilling the conditions of his enrolment under Rule 13 (3) Item I (i) (a) of the Army Rules, 1954. At the time of discharge from service, the Release Medical Board (RMB) held at Military Hospital, Patiala on 08.01.2000 assessed his disability '**CATARACT (LT) EYE (OPTD) – 366 V-67**' @ 11-14% for two years and opined the disability to be neither attributable to nor aggravated (NANA) by service. The applicant's claim for grant of disability pension was rejected vide letter dated 06.10.2000 which was communicated to the applicant vide letter dated 01.11.2000. It is in this perspective that the applicant has preferred the present Original Application.

3. Learned Counsel for the applicant pleaded that at the time of enrolment, the applicant was found mentally and physically fit for service in the Army and there is no note in the service documents that he was suffering from any disease at the time of enrolment in Army. The disease of the applicant was contacted during the service, hence it is attributable to and aggravated by Military Service. He pleaded that various Benches of Armed Forces Tribunal have granted disability pension in similar cases, as such the applicant be granted disability pension as well as arrears thereof.

4. On the other hand, learned counsel for the respondents opposed the submissions of learned counsel for the applicant and submitted that since the assessment of the disability element is 11-14% i.e. below 20%, therefore, condition for grant of disability element of pension does not fulfil in terms of para 173 of Pension Regulations for the Army, 1961, Part-I and, therefore, the competent authority has rightly denied the benefit of disability element of pension to applicant. He pleaded for dismissal of Original Application.

5. We have given our considerable thoughts to both sides and have carefully perused the records including Release Medical Board proceedings. The question in front of us is straight; whether the disability is attributable to/aggravated by military service and, if so, whether it is above or below 20% and also whether applicant was invalidated out of service on account of the disability?

6. It is undisputed case of the parties that applicant discharged from service on 01.06.2000 (Forenoon) on completion of terms of engagement. The applicant was in low medical category and his Release Medical Board was conducted on 08.01.2000 at Military Hospital, Patiala. The Release Medical Board assessed applicant's disability @ 11-14% for two years neither attributable to nor aggravated by military service.

7. As per para 173 of Pension Regulations for the Army, 1961, Part I, disability element of pension is eligible only when the disability is assessed at 20% or more and accepted as attributable to or aggravated by military service. Since, applicant's disability element is 11-14% for life, applicant does not fulfil the requirement of para 173 of the Pension Regulations for the Army, 1961, Part-I.

8. Since applicant was discharged from service on completion of terms of engagement, his case does not fall within the category of invalidation in which circumstance he would have become eligible for grant of disability element of pension @ 20% in terms of reported judgment in the case of ***Sukhwinder Singh vs Union of India & Ors,*** (2014) STPL (WEB) 468 where the operative part of the order reads:-

> "*9. We are of the persuasion, therefore, that firstly, any disability not recorded at the time of recruitment must be presumed to have been caused subsequently and unless proved to the contrary to be a consequence of military service. The benefit of doubt is rightly extended in favour of the member of the Armed Forces; any other conclusion would be tantamount to granting a premium to the Recruitment Medical Board for their own negligence. Secondly, the morale of the Armed Forces*

> *requires absolute and undiluted protection and if an injury leads to loss of service without any recompense, this morale would be severely undermined. Thirdly, there appears to be no provisions authorising the discharge or invaliding out of service where the disability is below twenty per cent and seems to us to be logically so. Fourthly, wherever a member of the Armed Forces is invalided out of service, it perforce has to be assumed that his disability was found to be above twenty per cent. Fifthly, as per the extant Rules/Regulations, a disability leading to invaliding out of service would attract the grant of fifty per cent disability pension*."

9. Further, contrary view to Release Medical Board dated 08.02.3000 to the extent of holding the applicant's disability at 11-14% for two years is not tenable in terms of Hon'ble Apex Court judgment in the case of ***Bachchan Singh vs Union of India & Ors***, Civil Appeal Dy No. 2259 of 2012 decided on 04th September, 2019 wherein their Lordships have held as under:-

> *"*..... After examining the material on record and appreciating the submissions made on behalf of the parties, we are unable to agree with the submissions made by the learned Additional Solicitor General that the disability of the appellant is not attributable to Air Force Service. The appellant worked in the Air Force for a period of 30 years. He was working as a flight Engineer and was travelling on non pressurized aircrafts. Therefore, it cannot be said that his health problem is not attributable to Air Force Service. <u>However, we cannot find fault with the opinion of the Medical Board that the disability is less than 20%.</u>"
>
> (underlined by us)

10. In light of the above judgment, inference may be drawn that Medical Board is a duly constituted body and findings of the board should be given due credence.

11. In addition to above, a bare reading of para 173 of Pension Regulations for the Army, 1961, Part- I, makes it abundantly clear that an individual being assessed disability below 20% is not entitled to disability element irrespective of disability being attributable to or aggravated by the military service. The Hon'ble

Supreme Court in Civil Appeal No 10870 of 2018 ***Union of India & Ors vs Wing Commander SP Rathore***, has made it clear vide order dated 11.12.2019 that disability element is inadmissible when disability percentage is below 20%. Para 9 of the aforesaid judgment being relevant is quoted as under:-

> *"9. As pointed out above, both Regulation 37 (a) and Para 8.2 clearly provide that the disability element is not admissible if the disability is less than 20%. In that view of the matter, the question of rounding off would not apply if the disability is less than 20%. If a person is not entitled to the disability pension, there would be no question of rounding off."*

12. In view of the discussions made above, Original Application lacks merit and same is accordingly **dismissed**.

13. Pending application, if any, stands disposed of.

14. No order as to costs.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated: 01 September, 2021

AKD/-